

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Media General Broadcasting of)	Facility ID No. 63329
South Carolina Holdings, Inc.)	NAL/Acct. No. 0641420012
Licensee of WNEG-TV, Toccoa, GA)	FRN: 0002207520

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: December 6, 2005

Released: December 9, 2005

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Chief, Media Bureau, pursuant to delegated authority, has before it for consideration a license renewal application for the captioned television station in Toccoa, Georgia. We find that Media General Broadcasting of South Carolina Holdings Inc. (Media General), licensee of station WNEG-TV, Toccoa, Georgia, willfully and repeatedly violated Section 73.3526 of the Commission's Rules (Rules) by failing to place in the station's public inspection file the annual EEO public file report, the quarterly TV issues/programs lists and records concerning compliance with the children's programming requirements.¹ For the reasons set forth below, we find Media General apparently liable in the amount of ten thousand dollars (\$10,000) for its violations of Sections 73.3526(e)(7), 73.3526(e)(11)(i) and 73.3526(e)(11)(ii) of the Rules.

II. BACKGROUND

2. In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

3. Moreover, Section 73.3526 of the Rules requires broadcast licensees to maintain a

¹ 47 C.F.R. § 73.3526.

public inspection file containing specific types of information related to station operations.² As set forth in Section 73.3526(e)(11)(iii) of the Rules, each commercial television broadcast station is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. Section 73.3526 of the Rules also requires commercial television stations to file the reports with the Commission and to publicize the existence and location of the reports. In addition, pursuant to Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Further, Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. Section 73.3526 also requires licensees to place records concerning commercial limits, Children's Television Programming Reports, and TV issues/programs lists for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Moreover, Section 73.2080(c)(6) provides that an EEO public file report is to be placed in a commercial TV broadcast station's public inspection file annually, on the anniversary of the date its renewal application is due to be filed. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.³

4. On December 1, 2004, the licensee filed a license renewal application (FCC Form 303-S) for station WNEG-TV, Toccoa, Georgia (File No. BRCT-20041201BMX). In response to Section IV, Question 3 of that application, the licensee certified that, during the previous license term, station WNEG-TV failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 to that application, the licensee indicates that, due to an inadvertent administrative oversight, the station's EEO Public File Report for 2003 was not placed in the station's public file by the anniversary of the date that the station's license renewal application would be due. The licensee states that upon discovery of this oversight, it prepared the report and placed it in the public file. The licensee also reports that four of station WNEG-TV's Children's Television Programming Reports were placed in the public inspection file or filed with the Commission late.

5. In addition, the licensee states that during preparation of the instant renewal application it determined that the station's TV issues/programs lists for the first quarter of 2001 through the fourth quarter of 2002 had not been prepared or placed in the public file. The licensee indicates that upon discovery of these violations, it prepared TV issues/programs lists for these quarters based on internal records and placed the lists in the public file in November 2004. Finally, the licensee reports that records concerning compliance with commercial limits in children's programming for the first quarter of 2001 through the first quarter of 2003 were missing from the public file. The licensee maintains that it placed these records in station

² See 47 C.F.R. § 73.3526.

³ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

WNEG-TV's public file in November 2004.

III. DISCUSSION

6. Station WNEG-TV's failure to place in its public inspection file the annual EEO public file report, the quarterly TV issues/programs lists, and records concerning compliance with the children's programming requirements constitutes a willful and repeated violation of Sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii). While corrective actions may have been taken to prevent future violations, this does not relieve it of the violations which have occurred. *International Broadcasting Corp.*, 19 FCC 2d 793 (1969).

7. Section 503(b) of the Communications Act of 1934, as amended (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵

8. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.⁶ In this case, the licensee concedes that the station's TV issues/programs lists for the first quarter of 2001 through the fourth quarter of 2002, and its records concerning compliance with commercial limits on children's programming for the first quarter of 2001 through the first quarter of 2003 were missing from the public inspection file. It also admits that the station's 2003 EEO public file report and several Children's Television Programming Reports were not timely placed in its public inspection file. Thus, the public file was not complete for a substantial period of time. Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violations in this case.

⁴ 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

⁶ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,⁷ Media General Broadcasting of South Carolina Holdings, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violations of Section 73.3526 of the Commission's Rules as indicated above.⁸

10. IT IS FURTHER ORDERED, That pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice, Media General Broadcasting of South Carolina Holdings, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

11. IT IS FURTHER ORDERED that, a copy of this Notice shall be sent by First Class and Certified Mail, Return Receipt Requested to the licensee at 333 East Franklin Street, Richmond, Virginia 23219, and to its attorney of record, Kevin P. Latek, Esquire, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau

⁷ 47 C.F.R. §§ 0.283 and 1.80.

⁸ 47 C.F.R. § 73.3526.

⁹ See 47 C.F.R. § 1.1914.